

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

UNITED STATES OF AMERICA)	
)	
vs.)	CR. NO. 2:09cr007-WHA
)	
JOSE A. GONZALEZ)	(WO)
ABRAHAM ARANGO)	

ORDER

This case is before the court on the Recommendation of the Magistrate Judge (Doc. # 54), recommending that the Defendants' Motion to Suppress be denied, together with Defendant's Objections thereto (Doc. # 55), and the Government's Response (Doc. #59).

The facts of this case are fully set out in the Magistrate Judge's Report and Recommendation. In summary, the Motion to Suppress concerns evidence obtained following a *Terry* stop and the subsequent search of the Defendant's vehicle. It is the Defendants' position that the officers had no lawful reason to initiate the stop that resulted in the discovery of 23 kilograms of cocaine hydrochloride in the vehicle.

The Magistrate Judge held an evidentiary hearing on the Motion to Suppress, and thereafter entered his report and recommendation. In accordance with the law of this Circuit, the court has conducted a *de novo* review of the Magistrate Judge's Recommendation, including reading the transcript of the evidentiary hearing, and fully considering the objections of the Defendant. *See Jeffrey S. by Ernest S. v. State Bd. of Educ. of State of Georgia*, 896 F.2d 507, 513 (11th Cir. 1990).

A district court judge has broad discretion to accept, reject, or modify a magistrate judge's proposed findings. *United States v. Raddatz*, 447 U.S. 667, 680 (1980). "Credibility

findings of a magistrate judge, ‘who personally observed and listened to the testimony of live witnesses, may be accepted unless the district judge, in his de novo review, finds reason to question the magistrate’s assessment of the evidence.’” *U.S. v. Jennings*, 491 F. Supp. 2d 1072, 1075 (M.D. Ala. 2007) (quoting *Blizzard v. Quillen*, 579 F.Supp. 1446, 1449 (D. Del. 1984)). *De novo* review does not require a new hearing of witness testimony, but it does require independent consideration of factual issues based on the record. *Jeffrey S. by Ernest S.*, 896 F.2d at 513. If the magistrate judge makes findings based on the testimony of witnesses, the district court is obliged to review the transcript or listen to a tape-recording of the proceedings. *Id.*

After reviewing the record, and reading the transcript of the evidentiary hearing, the court makes an independent factual determination and agrees with the Magistrate Judge’s credibility assessments, and legal conclusions.

The Defendants object to the Magistrate Judge’s finding that Officer Dunn had probable cause to believe that the tractor trailer’s driver, Gonzalez, had committed a traffic violation by making an improper lane change while driving a commercial vehicle prior to initiating the stop. Specifically, the Defendants object to the Magistrate Judge’s credibility assessment of the testimony of Officer Dunn regarding whether, shortly before changing lanes from the left lane into the right lane, the wheel of the tractor trailer momentarily drifted over the left lane’s fog line by approximately two feet. The Defendants argue that the video recording of the tractor trailer taken prior to the stop does not show the violation.

The court has independently considered the testimony of Officer Dunn, and the video recording, and agrees with the Magistrate Judge’s reasoned conclusions regarding Officer Dunn’s credibility, and finds that the totality of the evidence shows that the tractor trailer’s

wheels crossed over the fog line. The court also finds that the Magistrate Judge's legal conclusion, that Officer Dunn had cause to stop the vehicle are sound. Accordingly, the court agrees with the Report and Recommendation of the Magistrate Judge that the Motion to Suppress is due to be DENIED.

It is hereby ORDERED as follows:

1. The Objection is OVERRULED.
2. The court ADOPTS the Recommendation of the Magistrate Judge.
3. Defendant's Motion to Suppress is DENIED.

DONE this 7th day of August.

/s/ W. Harold Albritton
W. HAROLD ALBRITTON
SENIOR UNITED STATES DISTRICT JUDGE